

AMENDED IN ASSEMBLY MAY 17, 2004

AMENDED IN ASSEMBLY APRIL 28, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1967

**Introduced by Assembly Members Leno, Goldberg, Kehoe,
Laird, and Lieber**

(Principal coauthor: Senator Kuehl)

**(Coauthors: Assembly Members Chan, Dymally, Firebaugh,
Hancock, Koretz, Levine, Longville, Montanez, Nation,
Oropeza, Simitian, Steinberg, Wesson, Wiggins, and Yee)**

(Coauthors: Senators Escutia and Speier)

February 12, 2004

An act to amend Sections 300, 301, and 302 of the Family Code, relating to marriage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1967, as amended, Leno. Gender-neutral marriage.

Existing law provides that marriage is a personal relation arising out of a civil contract between a man and a woman. Existing law provides for the issuance of marriage licenses, as specified. Existing law further provides that only marriage between a man and a woman is valid or recognized in this state.

This bill would enact the “California Marriage License Nondiscrimination Act,” which would instead provide that marriage is a personal relation arising out of a civil contract between 2 persons. The bill would make conforming changes with regard to consent, and would make related findings and declarations.

By adding to the duties of county employees, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 “California Marriage License Nondiscrimination Act.”
- 3 SEC. 2. The Legislature finds and declares as follows:
- 4 (a) Civil marriage is a legal institution recognized by the state
- 5 in order to promote stable relationships and to protect individuals
- 6 who are in those relationships. The institution of marriage also
- 7 provides important protections for the families of those who are
- 8 married, including not only any children or other dependents they
- 9 may have, but also members of their extended families.
- 10 (b) From 1850 to 1977, the legal definition of marriage in
- 11 California was gender-neutral, containing no reference to “man”
- 12 or “woman.”
- 13 (c) In 1948, the California Supreme Court became the first state
- 14 court in the country to strike down a law prohibiting interracial
- 15 marriage. It was the only state supreme court to do so before the
- 16 United States Supreme Court invalidated all such laws in 1967.
- 17 The California Supreme Court held: “Marriage held that
- 18 “marriage is . . . something more than a civil contract subject to
- 19 regulation by the state; it is a fundamental right of free men. . .
- 20 Legislation infringing such rights must be based upon more than
- 21 prejudice and must be free from oppressive discrimination to
- 22 comply with the constitutional requirements of due process and



1 equal protection of the laws.” *Perez v. Sharp* (1948) 32 Cal.2d 711,
2 714-15.

3 (d) In 1977, the Legislature amended the state’s marriage law
4 to specify that, as a matter of state law, the gender-neutral
5 definition of marriage could permit same-sex couples to marry and
6 have access to equal rights and therefore would be changed. The
7 gender-specific definition of marriage that the Legislature adopted
8 specifically discriminated in favor of opposite-sex couples and,
9 consequently, discriminated and continues to discriminate against
10 same-sex couples.

11 (e) The highest courts in three states have held that denying the
12 legal rights and obligations of marriage to same-sex couples is
13 constitutionally suspect or impermissible under their respective
14 state constitutions. These states are Hawaii, Vermont, and
15 Massachusetts. The highest courts in three Canadian provinces
16 have similarly ruled that marriage laws that discriminate in favor
17 of opposite-sex couples to the exclusion of same-sex couples
18 violate the rights of same-sex couples and cannot stand.

19 (f) California’s discriminatory marriage law violates the
20 California Constitution’s guarantee of due process, privacy, and
21 equal protection of the law by arbitrarily denying equal marriage
22 rights to lesbian, gay, and bisexual Californians.

23 (g) California’s discriminatory marriage law harms same-sex
24 couples and their families by denying those couples and their
25 families specific legal rights and responsibilities under state law
26 and by depriving members of those couples and their families of
27 a legal basis to challenge federal laws that deny access to the many
28 important federal benefits and obligations provided only to
29 spouses. Those federal benefits include the right to file joint
30 federal income tax returns, the right to sponsor a partner for
31 immigration to the United States, the right to social security
32 survivor’s benefits, the right to family and medical leave, and
33 many other substantial benefits and obligations.

34 (h) Other jurisdictions have chosen to treat as valid or
35 otherwise recognize marriages between same-sex couples.
36 California’s discriminatory marriage law therefore also harms
37 California’s same-sex couples when they travel to other
38 jurisdictions by preventing them from having access to the rights,
39 benefits, and protections those jurisdictions provide only to
40 married couples.

1 (i) California's discriminatory marriage law further harms
2 same-sex couples and their families by denying them the unique
3 social recognition and affirmation that marriage confers on
4 heterosexual couples.

5 (j) The Legislature has an interest in encouraging stable
6 relationships regardless of the gender or sexual orientation of the
7 partners. The benefits that accrue to the general community when
8 couples undertake the mutual obligations of marriage accrue
9 regardless of the gender or sexual orientation of the partners.

10 (k) It is the intent of the Legislature in enacting this act to end
11 the pernicious practice of marriage discrimination in California.
12 This act is in no way intended to alter Section 308.5 of the Family
13 Code, which prohibits California from treating as valid or
14 otherwise recognizing marriages of same-sex marriages
15 solemnized outside of California. This act is in no way intended
16 to require religious bodies or officials to perform or recognize
17 marriages that do not fulfill the requirements of their religious
18 faith.

19 SEC. 3. Section 300 of the Family Code is amended to read:

20 300. (a) Marriage is a personal relation arising out of a civil
21 contract between two persons, to which the consent of the parties
22 capable of making that contract is necessary. Consent alone does
23 not constitute marriage. Consent must be followed by the issuance
24 of a license and solemnization as authorized by this division,
25 except as provided by Section 425 and Part 4 (commencing with
26 Section 500).

27 (b) Where necessary to implement the rights and
28 responsibilities of spouses under the law, gender-specific terms
29 shall be construed to be gender-neutral, except with respect to
30 Section 308.5.

31 SEC. 4. Section 301 of the Family Code is amended to read:

32 301. Two unmarried persons of the age of 18 years or older,
33 who are not otherwise disqualified, are capable of consenting to
34 and consummating marriage.

35 SEC. 5. Section 302 of the Family Code is amended to read:

36 302. An unmarried person under the age of 18 years is capable
37 of consenting to and consummating marriage if each of the
38 following documents is filed with the county clerk issuing the
39 marriage license:

1 (a) The written consent of the parents of each underage person,
2 or of one of the parents or the guardian of each underage person.

3 (b) A court order granting permission to the underage person
4 to marry, obtained on the showing the court requires.

5 SEC. 6. The Legislature finds and declares that this act does
6 not amend or modify Section 308.5 of the Family Code, which
7 addresses marriages from other jurisdictions, as enacted by an
8 initiative measure.

9 SEC. 7. Notwithstanding Section 17610 of the Government
10 Code, if the Commission on State Mandates determines that this
11 act contains costs mandated by the state, reimbursement to local
12 agencies and school districts for those costs shall be made pursuant
13 to Part 7 (commencing with Section 17500) of Division 4 of Title
14 2 of the Government Code. If the statewide cost of the claim for
15 reimbursement does not exceed one million dollars (\$1,000,000),
16 reimbursement shall be made from the State Mandates Claims
17 Fund.

